

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35808/35809/35810

STATE OF IDAHO,)	2009 Unpublished Opinion No. 668
)	
Plaintiff-Respondent,)	Filed: November 12, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
BLAKE ALLEN SIMMONS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order revoking probation and requiring execution of concurrent unified ten-year sentences with three-year determinate terms for one count of burglary, two counts of aiding and abetting burglary, and possession of methamphetamine with intent to deliver, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GRATTON, Judge
and MELANSON, Judge

PER CURIAM

These cases are consolidated. In two cases, Blake Allen Simmons was convicted of one count of burglary and two counts of aiding and abetting burglary, Idaho Code § 18-1401. The district court imposed concurrent unified ten-year sentences with three-year determinate terms on all counts, suspended the sentences and placed Simmons on probation. Subsequently, Simmons admitted to violating several terms of the probation when he pleaded guilty to a new charge of possession of methamphetamine with intent to deliver, I.C. § 37-2732(a)(1)(A). For the new charge, the district court imposed a ten-year sentence with three years determinate to be served concurrently with Simmons' two burglary sentences, revoked probation in the burglary cases,

and retained jurisdiction in all three cases. Due to a delay in being transported to the retained jurisdiction program, Simmons filed an Idaho Criminal Rule 35 motion which was denied. However, the district court ordered a second period of retained jurisdiction, and Simmons was placed on probation following completion of the rider program. Simmons later violated probation in all three cases but the district court continued Simmons on probation. Upon the filing of another report of probation violations, the district court revoked Simmons' probation and ordered execution of all original sentences. Simmons appeals, contending that the district court abused its discretion in revoking probation and in failing to sua sponte reduce his sentences upon revocation.

For purposes of this opinion we will assume, without deciding, that the district court possessed subject matter jurisdiction when it placed Simmons on probation following his rider. It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is (1) achieving the goal of rehabilitation and (2) consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 325, 834 P.2d at 327.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.* Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Therefore, the order revoking probation and directing execution of Simmons' previously suspended sentences is affirmed.